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c. Claims 8-12 and 15, of which Claim 8 is independent, have been rejected under 35 U.S.C. §103 as being unpatentable over Pontenzone et al. in view of Asmussen et al. and Gorozny et al., USPP 2006/0156326.

d. Dependent Claims 13 and 14 have been rejected under 35 U.S.C. §103 as being unpatentable over Pontenzone et al. in view of Asmussen et al., Gorozny et al., and Hempleman et al.

At the time the present invention was made, both it and Gorozny et al. were owned by Sony Corp. Specifically, when this invention was made it was owned in its entirety by Sony Corp. and Sony Electronics, Inc., a wholly-owned subsidiary of Sony Corp. Gorozny et al., at the time this invention was made, was and remains owned by Sony Deutschland GmbH, which in turn is owned in its entirety by both Sony Corp. and Sony Europe Holdings BV, a wholly-owned subsidiary of Sony Corp. Accordingly, grounds (c) and (d) above have been removed and will not be further addressed.

The fact that Applicant has focussed its comments distinguishing the present claims from the applied references and countering certain rejections must not be construed as acquiescence in other portions of rejections not specifically addressed.

Obviousness Rejections, Claim 1

The clear legal error in the rejection of Claim 1 is the admission that the references fail to teach generating a search vector by accessing a database containing income range (Office Action, page 3, lines 7

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and 11) coupled with the unsupported allegation that "income range is an extension of the personal profile taught by Hori". No, it is not, at least not based on the *evidence of record* as opposed to mere examiner argumentation.

As reiterated by the Supreme Court in KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727 (2007), "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." KSR, 550 U.S. at ___, 82 USPQ2d at 1396. In the present case, the examiner has placed an explicit admission on the written record that an element of Claim 1 is not in the prior art but instead of indicating allowability as would be mandated by such an admission, simply concludes, without evidentiary support, that the admittedly untaught element (income range) "is an extension" of sex and age and marital status.

Furthermore, age, sex, and marital status are personal characteristics; income is not. There is no reason why a non-personal characteristic should in any way be an "extension" of personal characteristics.

Obviousness Rejections, Claim 5

Claim 5 was previously amended to recite using purchase price information in the metadata to bill the user in a good faith effort to address the prior allegation that the claims did not reflect Applicant's point that "metadata is not involved in the actual billing process itself". For this good faith effort to address the examiner's concerns, Applicant has been rewarded with continued intransigence. Specifically, the examiner is completely unable to point to *evidence of record* of a teaching to bill for a download using purchase price information in metadata if the metadata associated with the title indicates a billable event, Office Action, page 4. Nonetheless, the examiner refuses to allow Claim 5 based on the unexplained "billing information" in

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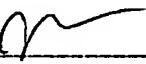
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paragraph 17 of Asmussen which could encompass a broad range of possible information that does not suggest any particular informational item, much less the one claimed. That purchase price information "could be" (Office Action, page 5, line 2) part of billing information is insufficient rationale to support a *prima facie* case of obviousness, In re Mills, 916 F.2d 680 (Fed. Cir. 1990) (mere fact that a reference "can be" modified to reach a claim is an insufficient basis for a finding of obviousness).

Note further that paragraph 17 of Asmussen does not explain how the "billing information" is used. For all paragraph 17 teaches, it is used to alert the user how much a subsequent purchase might cost, as opposed to the specific use recited in Claim 5. Certainly, the *evidence pointed to in the rejections* supports nothing more. There is thus insufficient evidence of record to support the conclusion of law that Claim 5 is obvious in light of the applied references.

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